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11 **BEFORE THE**
12 **PHYSICAL THERAPY BOARD OF CALIFORNIA**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
14 **STATE OF CALIFORNIA**

15 In the Matter of the Accusation Against: Case No. 1D 2001 62795

16 STEPHAN KUMMER, JR., OAH No.
17 3566 Madoc Road, No. 26
18 Santa Barbara, CA 93105

A C C U S A T I O N

19 Physical Therapist Assistant Approval
20 No. AT 4636

Respondent.

21 Complainant alleges:

PARTIES

22 1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official
23 capacity as the Executive Officer of the Physical Therapy Board of California, Department of
24 Consumer Affairs.

25 2. On or about December 19, 1996, the Physical Therapy Board of California issued
26 Physical Therapist Assistant Approval Number AT4636 to Stephan Kummer, Jr. (Respondent).
The Physical Therapist Assistant Approval was in full force and effect at all times relevant to the
charges brought herein and will expire on June 30, 2004, unless renewed.

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California

(Board), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 2609 of the Code states:

The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

5. Section 2660 of the Code states, in pertinent part:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

* * * * *

(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.®

6. Section 490 of the Code states:

AA board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.®

7. Section 2661 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere

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2 made to a charge of a felony or of any offense which substantially relates to the qualifications,
3 functions, or duties of a physical therapist is deemed to be a conviction within the meaning of
4 this article. The board may order the license suspended or revoked, or may decline to issue a
5 license, when the time for appeal has elapsed, or the judgement of conviction has been affirmed
6 on appeal or when an order granting probation is made suspending the imposition of sentence,
7 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person
8 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
9 of guilty, or dismissing the accusation, information, or indictment.

10 8. Section 493 of the Code states:

11 ANotwithstanding any other provision of law, in a proceeding conducted by a board
12 within the department pursuant to law to deny an application for a license or to suspend or
13 revoke a license or otherwise take disciplinary action against a person who holds a license, upon
14 the ground that the applicant or the licensee has been convicted of a crime substantially related
15 to the qualifications, functions, and duties of the licensee in question, the record of conviction of
16 the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that
17 fact, and the board may inquire into the circumstances surrounding the commission of the crime
18 in order to fix the degree of discipline or to determine if the conviction is substantially related to
19 the qualifications, functions, and duties of the licensee in question.

20 AAs used in this section, >license= includes >certificate,= >permit,= >authority,= and
21 >registration.=@

22 COST RECOVERY

23 9. Section 2661.5 of the Code states:

24 (a) In any order issued in resolution of a disciplinary proceeding before the
25 board, the board may request the administrative law judge to direct any licensee found guilty of
26 unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of
27 the investigation and prosecution of the case.

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(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of the assessed costs specified in the proposed decision.

(c) When the payment directed in an order for payment of costs is not made by the licensee, the board may enforce the order of payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license or approval of any person who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license or approval of any person who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one year period for those unpaid costs.

(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

10. Respondent is subject to disciplinary action under sections 2660, subdivision (d) and 490, in that on or about June 8, 2000, in a criminal proceeding entitled *The People of the State of California v. Stephan Kummer, Jr.* in Superior Court of the State of California, County of Santa Barbara, Case Number 1011115, Respondent was convicted by plea of guilty to Driving



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2 While Having a Blood Alcohol Level of 0.08% or Higher, in violation of Vehicle Code Section
3 23152, subdivision (b), a misdemeanor, and Fighting in a Public Place, in violation of Penal
4 Code Section 415, subdivision (a), also a misdemeanor. The circumstances are as follows:

5 a. On or about March 19, 2000, at approximately 1:07 a.m.,
6 Respondent was approached by two police officers after he exited a bar in Santa Barbara.
7 Noticing a strong odor of alcohol emanating from Respondent=s person, one of the officers
8 asked him where he was going. In slurred speech, Respondent answered he was walking home
9 because he had been drinking alcohol. Minutes later, the two officers saw Respondent enter his
10 vehicle and start the ignition. They approached Respondent, had him exit the vehicle, and told
11 him that due to his intoxication, he was not to drive the vehicle. Respondent agreed and said he
12 would call his father to come and drive him home. The two officers stayed in the area to observe
13 Respondent.

14 b. At approximately 1:22 a.m., the officers watched as Respondent,
15 backing his vehicle out of a parking space, nearly hit one of the officer=s marked patrol cars
16 which was parked behind Respondent=s vehicle. The officers ran after Respondent and told
17 him to stop as he exited the parking lot. Upon the officers= orders, Respondent turned off the
18 ignition and exited the vehicle. He immediately became argumentative as he was placed under
19 arrest. The officers called for back-up units when, after Respondent=s parents arrived to the
20 scene, Respondent became physically resistant and would not enter the police car. He began to
21 yell and scream obscenities. Eventually, Respondent was sprayed with pepper spray and taken
22 to the Santa Barbara County Jail for booking.

23 c. Respondent continued to be argumentative when he arrived at the
24 jail. He was subsequently administered a breath test which showed his blood alcohol level was
25 .14%.

26 d. On or about March 28, 2000. Respondent was charged as follows:

27 Count 1 - Driving Under the Influence of Alcohol, in violation of Vehicle Code Section 23152,

subdivision (a); Count 2 - Driving While Having A Blood Alcohol Level of 0.08% or Higher, in violation of Vehicle Code Section 23152, subdivision (b); and Count 3 - Resist, Obstruct, Delay of Peace Officer or EMT, in violation of Penal Code Section 148, subdivision (a)(1).

e. On or about June 8, 2000, following Respondent's plea of guilty to Count 2 and a lesser offense of Fighting in a Public Place, in violation of Penal Code Section 415, subdivision (a), Counts 1 and 3 were dismissed. Respondent was sentenced to probation for a period of three years and his license was suspended for five months. He was also ordered to pay a fine in the amount of \$1300, victim restitution in the amount of \$125, and participate in and successfully complete a state licensed alcohol counseling program.

SECOND CAUSE FOR DISCIPLINE

(Conviction of a Crime)

11. Respondent is subject to disciplinary action under sections 2660, subdivision (d) and 490, in that on or about December 3, 1992, in a criminal proceeding entitled *The People of the State of California v. Stephan Kummer*, in Superior Court of the State of California, County of Santa Barbara, Case Number 921122319, Respondent was convicted by plea of guilty to Driving Under the Influence of Alcohol, in violation of Vehicle Code Section 23152, subdivision (a). The circumstances are as follows:

a. On or about November 14, 1992, Respondent was stopped by a California Highway Patrol officer and asked to step outside of his vehicle. After failing a field sobriety test, Respondent was arrested and taken to the county jail. A subsequent blood test showed his blood alcohol level to be .19%.

b. On or about November 30, 1992, Respondent was charged as follows:

Count 1 - Driving Under the Influence of Alcohol, in violation of Vehicle Code Section 23152, subdivision (a), and Count 2 - Driving While Having A Blood Alcohol Level of 0.08% or Higher, in violation of Vehicle Code Section 23152, subdivision (b).

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c. On or about January 20, 1993, Count 2 was dismissed following Respondent=s plea of guilty to Count 1. He was subsequently sentenced to probation for a period of three years and his license was suspended for three months. Respondent was also ordered to pay a fine in the amount of \$1300, and participate in and successfully complete a state licensed alcohol counseling program.

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapist Assistant Approval Number AT4636, issued to Stephan Kummer, Jr.;

2. Ordering Stephan Kummer, Jr. to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;

3. Taking such other and further action as deemed necessary and proper.

DATED: __June 7, 2002__.

Original signed by Steven K. Hartzell__
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California

Department of Consumer Affairs
State of California
Complainant

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2Accusation.wpt 10/19/01
MPC 12/31/01